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REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

SINGAPORE REPORTS

CHINA INSURANCE CO. LTD. v. TEH LAIN LEE & ANOR.

[C.A. (Wee Chong Jin C.J., Chua and Choor Singh JJ.) October 27, 1976]

[Singapore — Civil Appeal No. 15 of 1976]

Insurance — Collision between policy holder's motor lorry and another motor vehicle — Lorry driven by policy holder's servant, K. in course of employment — Death of policy holder's servant, C. in said accident — Policy — Clause indemnifying any authorised driver subject to certain conditions — Interpretation of — Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 88), s. 4.

The appellants by a policy of insurance dated November 28, 1970 agreed to indemnify one Hassan, the policyholder and any other person driving on the policyholder's order or with his permission against liability at law in respect of the death or bodily injury to any person caused by or arising out of the use of the policyholder's motor lorry ND6796. On August 24, 1971 one Cheng Keng, a servant of the policyholder was killed as the result of a collision between motor lorry ND6796 and another motor vehicle. At the time of the collision one Khoo Chia Wah, a servant of the policyholder was driving motor lorry ND6796 on the order of the policy holder and in the course of his employment.

The respondents, as legal representatives of the estate of the deceased brought an action against the drivers of the vehicles claiming damages and obtained judgment against Khoo Chia Wah. The Court of Appeal dismissed Khoo's appeal against the judgment. As a result of Khoo's refusal to pay the judgment sum another action was commenced against the insurers before D'Cotta J., who gave judgment in favour of the respondents. The appellants appealed against the said judgment.

The appellants contended that in Paragraph 2 of section II of the Policy, the obligation of the insurer to indemnify "any authorised driver" was "subject to the limitations of (section II)" and, "Exceptions to section II" must apply to an authorised driver who claimed to be indemnified under the policy. They further argued that at the time of the accident the deceased was a servant of the policyholder in the course of his employment, the liability of Khoo Chia Wah was therefore not covered by the policy on the true construction of the policy.

Held, dismissing the appeal: (1) the liability of Khoo Chia Wah was covered by the insurance, so that, if an action had been brought against him, the respondents could have recovered the payment of his liability ultimately through the appellants;

(2) the appellants' contention to the effect that the liability of the appellants as insurers to indemnify an authorised driver, which was separate and distinct from the liability to indemnify the insured, did not extend to cover death or injury to employees of the insured was contrary to the provisions of section 4 of the Motor Vehicles (Third-Party Risks and Compensation) Act.

Cases referred to:-

(1) *Richards* v. *Cox* [1942] 2 All E.R. 624.

(2) *Chan Kum Fook & Ors.* v. *The Welfare Insurance Co. Ltd.* [1975] 2 M.L.J. 184.

COURT OF APPEAL.

M. Karthigesu for the appellants.

D. Murphy for the respondents.

In the court below, *Ho Thian Cheh* appearing for the plaintiffs and *Peter Lee* for the defendants, the following grounds of judgment was delivered on May 20, 1976:

D'Cotta J.: On the 10th day of August, 1973, the plaintiffs as the administratrix and co-administrator of the estate of one Cheng Keng, deceased, obtained judgment in the High Court in Suit 959 of 1972 against one Khoo Chia Wah alias Ku Tian Hock in the sum of $40,830 and costs which were taxed by the registrar on the 11th day of September, 1973.

The said Khoo Chia Wah appealed against the decision of the High Court but his appeal was dismissed by the Court of Appeal on the 22nd day of April, 1974 in Civil Appeal No. 26 of 1973.

Subsequently as the judgment debt was not satisfied, the plaintiffs sued the defendants in this suit for the recovery of the judgment sum plus interest as follows: —

(1) The sum of $40,830 with interest at the rate of 8 per cent per annum from the 10th day of August, 1973 until judgment or payment;

(2) The sum of $6,890.20 being taxed costs with interest at the rate of 8 per cent per annum from September 11, 1973 until judgment or payment;

(3) The sum of $2,527 being Court of Appeal costs with interest at the rate of 8 per cent per annum from the 30th day of May, 1974 until judgment or payment; and

(4) Costs.

The case came up for hearing on the 8th day of April, 1976 and judgment in terms of the claim abovementioned was entered against the defendants who now appeal against the decision.

At the trial both counsel submitted a Statement of Agreed Facts which was admitted and marked as court exhibit "A" the gist of which is as follows: —

(1) By a policy of insurance dated the 28th day of November, 1970 and issued by the defendants

to one Hassan bin Haji Othman trading as Hassan Trading Co. (hereinafter referred to as "the policy holder") the defendants in consideration of the premium of $1,333.15 been paid by the policy holder, agreed subject to conditions and exceptions, to indemnify the said policy holder and any other person driving on the policy holder's order or with his permission against liability at law for compensation and costs in respect of the death of or bodily injury to any person caused by or arising out of the use of the said motor lorry ND.6796. A certificate of insurance was delivered by the defendants to the said policy holder in respect of the said policy of insurance (see AB32 to AB39);

(2) The said Khoo Chia Wah was driving the said motor lorry ND.6796 with the permission or order of the policy holder and was acting in the course of his employment;

(3) At the time of the accident, the deceased was a servant of the policy holder acting in the course of his employment with the said policy holder;

(4) The deceased was killed as a result of the negligence of the said Khoo Chia Wah in the reversing of the said motor lorry;

(5) At the time of the accident, the said Khoo Chia Wah was not disqualified by any order of court from driving the said motor lorry;

(6) The said Khoo Chia Wah was not entitled to indemnity under any other insurance policy;

(7) The death of the deceased arose out of and in the course of his employment.

The defendants contend that the policy holder is not entitled to be indemnified by them in respect of the claim of the plaintiffs and the judgment obtained against the said Khoo Chia Wah for the following reasons: —

(a) The deceased Cheng Keng who died at Singapore was on the 24th day of August, 1971 employed by the policy holder Hassan bin Haji Othman as a lorry attendant on motor lorry bearing registration No. ND.6796;

(b) By virtue of the proviso (i) of paragraph (b) of section 4(1) of the Motor Vehicles (Third-Party Risks and Compensation) Act (Cap. 88), a policy of insurance required to be taken out in respect of the user of a motor vehicle of section 3(1) of the Act is not required to cover liability in respect of the death arising out of and in the course of his employment of a person in the employment of the policy holder;

(c) The policy of insurance expressly excluded liability in respect of death or bodily injury to any person in the employment of the policy holder arising out of and in the course of such employment;

(d) If the said deceased Cheng Keng died as a result of collision with motor lorry bearing number ND.6796 (which is not admitted) the said deceased was such an employee liability in respect of whose death is not required to be covered by the Act and was consequently excluded from the scope of the policy of insurance issued by the defendants; and

(e) The alleged judgment obtained by the plaintiffs against the said Khoo Chia Wah was not in respect of any liability as is required to be covered by a policy under paragraph (b) of section 4(1) of the Act.

It is submitted by counsel for the defendants that because of the wording of Exception (ii) to Section II of the policy (AB32) the defendants are not liable to make any payment to the plaintiffs. Exception (ii) reads as follows: —

"The company shall not be liable in respect of —

(ii) death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment."

This submission is based on the fact that the deceased was at the time when he met with the accident in the employment of the policy holder. The wording of this exception is based on the first two provisoes to section 4(1) of the Act.

Counsel for the defendants conceded that some authorities appeared to be against his contention and quoted the case of *Richards* v. *Cox*.[1] Paragraph 2 of the insurance policy in the *Richards* v. *Cox* case reads as follows: —

"Paragraph (2) provided that the insurance company would treat as though he were the insured person any authorised driver of the car provided 'that such authorised driver shall as though he were the insured observe fulfil and be subject to the terms exceptions and conditions of this policy in so far as they can apply'."

It will be observed that paragraph 2 is *in pari materia* with section II(2) of the policy of insurance (AB32) and all the three appellate judges in *Richards* v. *Cox* case were of the view that section II intended to provide third party coverage.

Now section II paragraph 1 of the policy of insurance (AB32) reads as follows: —

"The company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of —
(a) death of or bodily injury to any person;
(b) damage to property."

Paragraphs 2 and 3 to section II of AB32 read as follows: —

"2. In terms of and subject to the limitations of and for the purposes of this section, the company will indemnify any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver —

(i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply;

(ii) is not entitled to indemnity under any other policy.

3. In the event of the death of any person entitled to indemnity under this section, the company will in respect of the liability incurred by such person indemnify his personal representatives in terms of and subject to the limitations of such section provided that such representatives shall as though they were the insured observe fulfil and be subject to the terms of this Policy insofar as they can apply."

It is not disputed that both the deceased and the driver Khoo Chia Wah were in the employment of the policy holder at the time when the deceased

met his death. Incidentally, both of them were driver-cum-attendant on the same motor lorry and when one was driving the other would be attendant and vice versa.

Now sub-paragraph (iii) of the Exceptions to Section II in AB32 reads as follows: —

"The company shall not be liable in respect of —

... (iii) death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from the Motor Vehicle at the time of the occurrence of the event out of which any claim arises."

In my opinion, the effect of the words in brackets in Exception (iii) above is to make the defendants liable as a result of the death of the deceased because at that time the deceased was being "carried by reason of or in pursuance of a contract of employment". In the case of *Chan Kum Fook & Ors.* v. *The Welfare Insurance Co. Ltd.*,[2] Tan Ah Tah J. held a similar view that the effect of the words in brackets in Exception (iii) is to make the defendants liable in respect of injuries sustained by the plaintiffs who were passengers "carried by reason of or in pursuance of a contract of employment".

In this instant case judgment having been entered against Khoo Chia Wah the defendants must now indemnify him against the claim of the plaintiffs.

Again, section 8(1) of the Act reads as follows: —

"8. — (1) If after a certificate of insurance has been issued under subsection (4) of this Act to the person by whom a policy has been effected judgment in respect of any such liability as is required to be covered by a policy under paragraph (b) of subsection (1) of section 4 of this Act (being a liability covered by the terms of the policy) is obtained against any person insured by the policy then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the Public Trustee as trustee for the persons entitled thereto any sum payable thereunder in respect of the liability including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments."

The effect of section 8(1) is that notwithstanding the insurer is entitled to avoid or cancel a policy he shall pay to the Public Trustee the amount due on a judgment with costs. Furthermore, it is clearly stated in paragraph 2 to Section II of the policy (AB32) that the insurance company will indemnify any authorised driver who is driving the motor vehicle provided certain conditions are observed. In my view, all the relevant conditions have been complied with. Judgment having been entered against the authorised driver of motor lorry ND.6796 the defendants must now indemnify him against the claim of the plaintiffs. Accordingly judgment was entered for the plaintiffs for the amount claimed.

[*From the above judgment the defendants appealed to the Court of Appeal. In the Court of Appeal the following judgment was delivered:*]

Wee Chong Jin C.J. (delivering the judgment of the Court): The appellants, China Insurance Co. Ltd., by a policy of insurance dated November 28, 1970 agreed to indemnify one Hassan bin Haji Othman (hereinafter referred to as "the policyholder") and any other person driving on the policyholder's order or with his permission against liability at law in respect of the death or bodily injury to any person caused by or arising out of the use of the policyholder's motor lorry ND.6796.

On August 24, 1971 one Cheng Keng, a servant of the policyholder (hereinafter referred to as "the deceased") was killed as the result of a collision between motor lorry ND.6796 and another motor vehicle. At the time of the collision one Khoo Chia Wah, a servant of the policyholder was driving motor lorry ND.6796 on the order of the policyholder and in the course of his employment.

The respondents, as legal representatives of the estate of the deceased brought an action against the drivers of the vehicles claiming damages and obtained judgment against Khoo Chia Wah for $40,830 and costs which were taxed at $6,892.20. The Court of Appeal dismissed Khoo Chia Wah's appeal against the judgment with costs which were taxed at $3,027. The respondents then requested the appellants to satisfy the judgment including costs and on the refusal of the appellants to pay the judgment sum and taxed costs the respondents commenced the present action. They succeeded before D'Cotta J. and the appellants now appeal against the judgment of D'Cotta J.

The sole point before us turns on the wording of the policy of insurance, in particular of Section II which is headed "Liability To Third Parties" and of clause (ii) under the heading "Exceptions to Section II".

Paragraph 1 of Section II of the policy provides as follows: —

"1. The company will subject to the Limits of Liability indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Vehicle or in connection with the loading or unloading of the Motor Vehicle against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of —

(a) death of or bodily injury to any person."

Paragraph 2 of Section II of the policy provides as follows: —

"2. In terms of and subject to the limitations of and for the purposes of this section the company will indemnify any Authorised Driver who is driving the Motor Vehicle provided that such Authorised Driver —

(i) shall as though he were the Insured observe fulfil and be subject to the Terms of this Policy insofar as they can apply;

(ii) is not entitled to indemnity under any other policy."

Clause (ii) under the heading "Exceptions to Section II" provides as follows: —

"The company shall not be liable in respect of death of or bodily injury to any person in the employment of the Insured arising out of and in the course of such employment."

Counsel for the appellants contends that in paragraph 2 of Section II of the policy the obligation of the insurer to indemnify "any authorised driver" is "subject to the limitations of (Section II)" and, accordingly, that clause (ii) under the heading "Exceptions to Section II" must apply to an authorised driver who claims to be indemnified under the policy. In the present case, as it is common ground that at the time of the accident the deceased was a servant of

the policyholder acting in the course of his employment, it is submitted that the liability of Khoo Chia Wah (the authorised driver) was not covered by the policy on the true construction of the policy.

We are unable to accept this contention and are of the opinion that the appeal should be dismissed. The same point was raised and decided by the English Court of Appeal in *Richards* v. *Cox*.[1] In the English case the paragraph which corresponds to paragraph 2 of Section II of the policy in the present case reads as follows: —

"In terms of and subject to the limitations of and for the purposes of this section the company will treat as though he were the insured person any person who is driving such vehicle on the insured's order or with his permission provided (A) that such person is not entitled to indemnity under any other policy, (B) that such person shall as though he were the insured observe fulfil and be subject to the terms exceptions and conditions of this policy in so far as they can apply."

There is also a proviso in the English case corresponding to clause (ii) under the heading "Exceptions to Section II" of the policy in the present case. Scott L.J. at page 626 said: —

"The whole appeal before us turned on the wording of the policy. It is more or less in accord with the common form of motor accident policies since the Road Traffic Acts were passed, and contains a great number of different clauses. It begins with the ordinary form of recital referring to the insured as designated in the schedule, carrying on the business there described, and so on. Under section II of the policy, headed 'Liability to third parties', there is this provision in paragraph (I):

'The company will indemnify the insured against liability at law for compensation and claimant's costs and expenses in respect of: Death of or bodily injury to any person caused by or arising out of the use of any vehicle described in the schedule hereto'.

Then certain provisoes are added:

Provided always that the company shall not be liable in respect of ... (B) Death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment. (C) Death of or bodily injury to any person (other than a passenger carried by reason of or in pursuance of a contract of employment) being carried in or upon or entering or getting on to or alighting from such vehicle at the time of the occurrence of the event out of which any claim arises.

Then follows a further paragraph (2), the important provision in this case. It says this:

'In terms of and subject to the limitations of and for the purposes of this section the company will treat as though he were the insured person any person who is driving such vehicle on the insured's order or with his permission provided (A) that such person is not entitled to indemnity under any other policy, (B) that such person shall as though he were the insured observe fulfil and be subject to the terms exceptions and conditions of this policy in so far as they can apply'.

The last seven words are necessarily added, in my opinion, because under this paragraph (2) a person other than the primary insured is treated as also covered by the policy; and it is obvious that various provisions in the policy applicable to the primary insured, Messrs. Dickerson Brothers, will not apply to the case of such other person. In my view, the words 'in so far as they can apply' mean that such of the terms, conditions and exceptions of Messrs. Dickerson's insurance as are reasonably applicable to the insurance of their driver's liability are incorporated in the latter's cover; but, in so far as they are not so applicable, they are to be disregarded. I think that the provision so made is quite clear, and a very natural provision to be made, having regard to the terms of the Road Traffic Act, 1930, section 36; and I can see no escape from the conclusion that the liability of Robson was covered by the insurance, so that, if an action had been brought against him, the plaintiff in this case could have recovered the payment of his liability ultimately through the insurance company.

Counsel for the appellant has argued very strenuously that the provisoes to the first paragraph of section II, which I have already read, shut out the interpretation of the second paragraph which I have just read. My first answer is that those provisions seem to me to be addressed to the case of Dickerson Brothers incurring the liability and to the insurance of them for their own protection under the statute; but, even if you read them as conceivably in some circumstances applicable to the case of the insurance of a driver authorised by them to drive the insured car, it does not seem to me that they are sufficient to affect the primary object of the quite separate paragraph (2), which is the insurance of the driver."

Instead of the words "the company will treat as though he were the insured person any person" in the English policy, the present policy contains the words "the company will indemnify any authorised driver". In our opinion the reasoning of Scott L.J. from the passage we have just quoted applies with equal force to the corresponding provisions of the policy in the present case. It is to be observed that if the contention of counsel for the appellants is correct the liability of the appellants as insurers to indemnify an authorised driver, which is separate and distinct from the liability to indemnify the insured, does not extend to cover death or injury to employees of the insured and this, in our opinion, would be contrary to the provisions of section 4 of the Motor Vehicles (Third-Party Risks and Compensation) Act.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *S.K. Lee & Co.; Ho Thian Cheh & Co.*

E. & M.W. (LATEX) LIMITED v. THE CHIEF ASSESSOR, PROPERTY TAX DIVISION

[C.A. (Wee Chong Jin C.J.) October 27, 1976]
[Singapore — Originating Motion No. 11 of 1974]

Property Tax — Premises of Port of Singapore Authority — Whether exempted from property tax — Application of s. 28(1), Port of Singapore Authority Act — Scope of — Port of Singapore Authority Act (Cap. 173), ss. 14(1) & (2), 28(1) — Local Government Ordinance, 1957, ss. 108 to 130 — Property Tax Ordinance 1960, ss. 6, 8 & 12 — Property Tax Act (Cap. 144).

The premises in question was vested in the Port of Singapore Authority, by virtue of section 14(1) of the Port of Singapore Authority Act under which "all lands buildings and other property ... of the Singapore Harbour Board ... shall be transferred to and vest in the (P.S.A.) without further assurance." By section 14(2) the "liabilities and obligations" of the Singapore Harbour Board "shall also be transferred to and be deemed to have been incurred by the (P.S.A.)".

The issue before the court was whether on the proper construction of section 28(1) of the Port of Singapore Authority Act, "houses, buildings, lands and tenements" of the Port of Singapore Authority were exempted from property tax.

Held, allowing the appeal: (1) the Property Tax Ordinance, 1960 comes within the meaning of the words "any written law repealing and re-enacting the provisions (of the Local Government Ordinance, 1957) in section 28(1) of the Port of Singapore Authority Act. Hence, by virtue of the Port of Singapore Authority Act "houses, buildings, lands and tenements" of the Port of Singapore Authority are exempted from property tax;